

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ILENE BRAXTON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
 Commissioner of Social Security,

Defendant.

3:12-cv-28-RCJ-VPC

ORDER

Currently before the Court is the Report and Recommendation of U.S. Magistrate Judge (#22).

BACKGROUND

In February 2013, U.S. Magistrate Judge Valerie Cooke issued a Report and Recommendation ("R&R") on the above-referenced case pursuant to 28 U.S.C. § 636(b)(1)(B) and Nev. Loc. R. IB 1-4. (R&R (#22) at 1). The R&R recommended that this Court deny Plaintiff's motion to remand (#13) and grant Defendant's cross-motion for summary judgment (#18). (*Id.*).

The R&R states the following. (*Id.*). On October 29, 2008, Plaintiff Ilene E. Braxton ("Plaintiff") filed an application for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act and an application for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act. (*Id.*). Plaintiff alleged disability beginning February 28, 2007, due to degenerative disc disease, muscle spasms, nervous tics in her extremities, an inability to bend, twist, hold or lift heavy items, supraventricular tachycardia ("SVT"), heart murmur, neck problems, shoulder problems, numbness, stiff hips, an occasional inability to walk and

1 problems sleeping due to pain. (*Id.* at 1-2). The Social Security Commissioner denied
2 Plaintiff's claims initially and on reconsideration. (*Id.* at 2). On September 17, 2010, Plaintiff
3 appeared at a hearing before Administrative Law Judge ("ALJ") Jean R. Kerins. (*Id.*). On
4 November 3, 2010, the ALJ issued a written opinion, upholding the denial of Plaintiff's claims.
5 (*Id.*). On November 18, 2010, the Appeals Council denied review, rendering the ALJ's
6 decision final. (*Id.*). On January 17, 2012, having exhausted all administrative remedies,
7 Plaintiff filed a complaint for judicial review in this Court. (*Id.*).

8 On judicial review, Plaintiff argues that the ALJ made multiple legal errors and came to
9 conclusions that were not supported by substantial evidence in the record. (*Id.* at 4). Plaintiff
10 asserts that the ALJ: (1) improperly disregarded Plaintiff's obesity at Steps 2 and 3 of the
11 sequential evaluation process; (2) should have obtained an MRI report before finding Plaintiff's
12 brain atrophy to be a non-severe impairment; (3) should have ordered a consultative
13 evaluation to assess Plaintiff's brain atrophy; and (4) should have followed the "Special
14 Technique" set forth in 20 C.F.R. § 404.1520a to assess Plaintiff's brain atrophy. (*Id.*).

15 In the R&R, Judge Cooke found: (1) the ALJ did not commit reversible error in failing
16 to consider Plaintiff's obesity at Step 2 of the sequential evaluation process; (2) the ALJ did
17 not commit reversible error in failing to consider Plaintiff's obesity at Step 3 of the sequential
18 evaluation process; (3) substantial evidence in the record supported the ALJ's conclusion that
19 Plaintiff's brain atrophy was a non-severe impairment; and (4) there was nothing in the record
20 that supported Plaintiff's assertion that she was mentally impaired within the meaning of 20
21 C.F.R. § 404.1520a. (*Id.* at 8, 10, 12, 14). Judge Cooke concluded that the ALJ's decision
22 was supported by substantial evidence in the record and recommended that this Court deny
23 Plaintiff's motion to remand and grant Defendant's cross-motion for summary judgment. (*Id.*
24 at 14).

25 Plaintiff's objections are now pending before this Court. (Objections (#25)).

26 DISCUSSION

27 Plaintiff files an objection to the R&R. (Objections (#25) at 1). Plaintiff asks this Court
28 "to reconsider this case *de novo*, examining all issues raised and fully briefed." (*Id.* at 2).

1 Plaintiff's specific objection states in full:

2 In finding Plaintiff not disabled, the Magistrate Judge impermissibly substituted
3 her judgment for that of the ALJ, in contravention of well-settled principles of
4 administrative law. The Magistrate attempted to clarify and justify the ALJ's
5 findings. She ascribes rationale to his findings that the ALJ never actually
expressed, deeming it "substantial evidence." R&R at 12. However, the ALJ's
rationale was opaque at best, and if she could not clearly explain her findings in
her decision, the Court may not do so for her now.

6 (*Id.*). Plaintiff requests that this Court "review all arguments *de novo*, requiring the ALJ, at a
7 minimum, to make proper findings at Steps 2 and 3, utilizing the proper technique for
8 evaluating mental impairments under 20 C.F.R. § 404.1520a." (*Id.* at 3).

9 In response, the Commissioner argues that the R&R reveals that the magistrate judge
10 regularly referenced the ALJ's findings including medical evidence and Plaintiff's testimony.
11 (Resp. to Objections (#26) at 1). The Commissioner asserts that the magistrate judge did not
12 replace her judgment for the ALJ's but instead, in accordance with established case law,
13 determined that any ALJ error in failing to consider such evidence had no effect on the
14 outcome and was harmless. (*Id.* at 1-2). The Commissioner argues that Plaintiff fails to
15 demonstrate any error either by the ALJ or magistrate judge and urges this Court to adopt the
16 R&R in full. (*Id.* at 2).

17 Pursuant to Local Rule IB 3-2, a party wishing to object to the findings and
18 recommendations of a magistrate judge shall "file and serve specific written objections
19 together with points and authorities in support thereof." Nev. Loc. R. IB 3-2(a). "The district
20 judge shall make a *de novo* determination of those portions of the specified findings or
21 recommendations to which objections have been made. The district judge may accept, reject
22 or modify, in whole or in part, the findings or recommendations made by the magistrate judge."
23 Nev. Loc. R. IB 3-2(b); see also 28 U.S.C. § 636(b)(1)(C).

24 In this case, the Court finds that Plaintiff has failed to make specific written objections
25 warranting *de novo* review of all issues raised and briefed. Instead of specifically identifying
26 portions of the R&R that Plaintiff objects to and the reasoning for those objections, Plaintiff
27 asserts that it is entitled to a complete *de novo* review. With respect to the objection that the
28 magistrate impermissibly substituted her judgment for that of the ALJ, Plaintiff off-handedly

1 cites to page 12 of the R&R. A review of page 12 of the R&R demonstrates that the
2 magistrate judge cited and quoted the medical evidence in the administrative record and the
3 ALJ's finding. (See R&R (#22) at 12). Plaintiff does not argue or state that any of the medical
4 evidence referred to in the R&R is incorrect. This Court notes that on judicial review the courts
5 must determine whether substantial evidence exists to support the findings of the ALJ and
6 that, in making that determination, the courts must look at the record as a whole, considering
7 both evidence that supports and undermines the ALJ's findings. *Orteza v. Shalala*, 50 F.3d
8 748, 749 (9th Cir. 1995). This is what the magistrate judge did on review and Plaintiff has not
9 made any specific objections to the contrary. The Court denies Plaintiff's objections and
10 request for full *de novo* review and adopts in full the Report and Recommendation of U.S.
11 Magistrate Judge (#22).

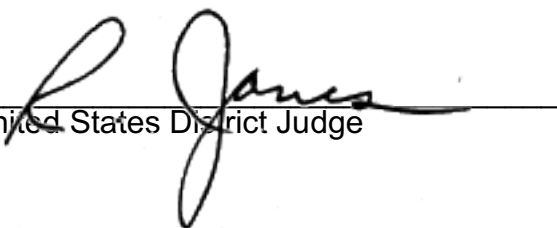
12 CONCLUSION

13 For the foregoing reasons, IT IS ORDERED that the Report and Recommendation of
14 U.S. Magistrate Judge (#22) is ADOPTED in full.

15 IT IS FURTHER ORDERED that Plaintiff's Motion to Remand (#13) is DENIED.

16 IT IS FURTHER ORDERED that Defendant's Cross-Motion for Summary Judgment
17 (#18) is GRANTED.

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19 DATED: This _9th _ day of July, 2013.

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22 United States District Judge
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